
**Labor & Workplace Standards
Committee**

HB 2087

Brief Description: Concerning objections to apprenticeship programs.

Sponsors: Representatives Schmidt, Leavitt, Connors, Christian, Walen, Chambers, Ybarra, Jacobsen, Graham, Tharinger, Schmick and Couture.

Brief Summary of Bill

- Establishes statutory processes for competitor objections to the approval of apprenticeship programs and standards by the Washington State Apprenticeship and Training Council.

Hearing Date: 1/16/24

Staff: Kelly Leonard (786-7147).

Background:

Registered Apprenticeships.

Apprenticeship programs combine on-the-job training and classroom instruction, typically leading to a credential, certification, or journey-level status in a particular trade or profession. The Washington State Apprenticeship and Training Council (WSATC) is certified by the United States Department of Labor to register apprenticeship programs. The WSATC establishes program standards, approves training programs, issues completion certificates, offers advice and guidance on apprenticeships, and generally governs apprenticeship programs. The Department of Labor and Industries (L&I) implements and enforces the policy set by the WSATC.

An apprenticeship program must have a sponsor, which could be an employer, union, or employer association, among others. Sponsors oversee every aspect of an apprenticeship

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program, from development to actual administration. In order to sponsor an apprenticeship program, the sponsor must create a written agreement, or "program standards," that are reviewed by L&I and approved by the WSATC. Program standards clearly outline how a program will operate and the expectations of the program and apprentices. Program standards cover several items, including: minimum qualifications; length of the training; related supplemental instruction (classroom or online instruction); skills required to complete the program; wage progression; geographical area for the program; ratios of apprentices to journey-level professionals; probationary periods and disciplinary procedures; and other significant sponsor responsibilities.

In addition to developing and implementing program standards, a program sponsor must:

- oversee on-the-job training and monitor attendance at related training classes;
- evaluate progress of apprentices before recommending advancement; and
- recommend award of the certificate of completion when an apprentice has satisfactorily completed the required course work and on-the-job training.

The process for submitting and reviewing a proposal for a new program and its standards, or any related revisions, is established through agency rules adopted by L&I. The WSATC generally approves or denies applications for apprenticeship programs at its regular quarterly meetings. If approved by the WSATC, a program becomes a registered apprenticeship program. Registered apprenticeship programs are subject to ongoing review and oversight by L&I and the WSATC.

Competitor Objections.

In *Seattle Bldg. & Constr. Trades Council* (1996), the State Supreme Court (Court) determined that the Legislature intended for new apprenticeship programs to match the standards of existing programs, and therefore intended for new programs not meeting those standards to not be allowed to compete with existing programs. The Court held that competitors with a sufficient zone of interest have standing to object to the approval of an apprenticeship program by the WSATC, requiring an adjudicative proceeding under the Administrative Procedure Act for the purposes of reviewing the application for registration.

The competitor objection process is governed by rules adopted by L&I. Under those rules, a "competitor" refers to an apprenticeship program providing training in the same or similar occupation as one already existing in a certain geographic area. To determine whether a program provides training in the same or similar occupation, the WSATC may consider: approved apprenticeship standards; collective bargaining agreements; dictionaries of occupational titles; experts from organized labor, licensed contractors, and contractors' associations; recognized labor and management industry practice; and the scope of work descriptions issued by L&I.

If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must provide timely and specific objections in writing to the apprenticeship supervisor 20 calendar days prior to the next regular quarterly meeting. If an objection is filed, L&I notifies the program sponsor within two business days and forwards the matter to the WSATC. Then, the WSATC has two options: adjudicate the matter itself; or refer

the matter to the Office of Administrative Hearings (OAH) for initial adjudication.

If the WSATC decides to adjudicate all or part of the objection, a hearing on the objection must take place at the regular quarterly meeting or at a special meeting convened for purposes of hearing the objection. L&I must notify the competitor making the objection and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation 10 calendar days prior to the original scheduled date of the regular quarterly WSATC meeting.

If the WSATC decides to refer all or part of the objections to the OAH, the WSATC must identify the specific matters on which the WSATC is requesting the OAH to provide findings and conclusions for the initial order.

L&I may attempt to facilitate a resolution to any objections during the adjudication process.

Summary of Bill:

The process for filing and adjudicating competitor objections is modified.

A competitor may object to the approval of a new apprenticeship committee, proposed standards, or proposed revisions to existing program standards, if the committee or standards do not conform to agency rules adopted by L&I.

For the WSATC to consider an objection, the competitor must have standing based on standards established by L&I, and must file the objection in writing at least 20 calendar days prior to the meeting where the committee or standards are scheduled to be reviewed by the WSATC. The written objection must include details regarding which specific aspects of the application do not conform to agency rules. L&I must then notify the program sponsor and the WSATC within two business days of receiving the objection.

At the meeting, the WSTAC must determine whether the competitor has standing to object to the application. If the council determines that the competitor has standing, the WSATC may:

- provide the applicant, competitor, and L&I an opportunity to explain their views on the objection and application, and then the WSATC may rule on the application and the objection; or
- grant the program sponsor 30 calendar days after the meeting to submit a written rebuttal to the objection, and hold a special meeting prior to its next regularly scheduled meeting.

If the WSATC deferred action to allow for a rebuttal by the program sponsor, L&I must investigate and evaluate the objection and rebuttal and provide a report to the WSATC prior to the special meeting. The report must include a recommendation on how the WSATC should rule on the objection based on agency rules. At the special meeting, the WSATC must provide the applicant, competitor, and L&I an opportunity to explain their views on the objection and application. The council must rule on the objection. At the next regularly scheduled meeting following the special meeting, the WSATC must take action on the application and provide a

specific written explanation of its decision.

At the discretion of the WSTAC, a special meeting required by the bill may be conducted virtually. If requested by the applicant, the WSATC may grant additional time to the applicant to file a rebuttal and delay the date of the special meeting.

The WSATC may require a competitor to pay an applicant's reasonable attorneys' fees and costs for the rebuttal and special meeting if the WSATC finds that the competitor's objection was not substantially justified.

The adjudicative process for considering competitor objections is exempt from the Administrative Procedure Act.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.